Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-120

UNITED STATES OF AMERICA,
Petitioner

—*v.*—

MARTIN LINEN SUPPLY COMPANY AND
TEXAS SANITARY TOWEL SUPPLY CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JULY 27, 1976
CERTIORARI GRANTED NOVEMBER 1, 1976

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UNITED STATES OF AMERICA,

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—*v.*—

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* A copy of the opinion of the court of appeals is reprinted as Appendix A to the petition for a writ of certiorari. Also reprinted in the petition, and not reproduced in this Appendix, are: the judgment of the court of appeals (Pet. App. 10a); a previous opinion of the court of appeals (Pet. App. 11a); the opinion of the district court dismissing the contempt petitions (Pet. App. 29a); the district court's judgments of acquittal (Pet. App. 40a and 42a); and the consent judgment in the original antitrust case (Pet. App. 44a).

RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

12-09-71 Petition filed.

12-09-71 Order to Show Cause filed.

1-12-72 Motion for Order Directing the USA to File a Bill of Particulars and Points and Authorities in Support Thereof filed.

1-12-72 Motion for Discovery and Inspection Including Disclosure of all Evidence Favorable to Respondents, filed.

1-14-72 Certified Copy of Order ectendinf time to conduct discovery filed.

2-04-72 Government Bill of Particulars filed.

2-10-72 Hearing on all motions. Motion to Stay Discovery—Granted.

4-10-72 Hearing on Construction of Consent Decree. Case taken under advisement by Court.

5-24-72 Motion to Dismiss Criminal Contempt Petition as to Respondent William B. Troy filed.

5-30-72 Application for leave of Court to Dismiss the Remaining Counts of the Petitions filed.

6-12-72 ORDER dismissing charges of violations of Section V(A)(1) contained in paragraphs 10, 11, 12, and 13 filed.

7-05-72 Dismissal of Charges Without Prejudice filed.

7-12-72 Notice of Appeal filed.

8-21-72 All original papers in this case forwarded by mail to the U.S. Court of Appeals for the Fifth Circuit, New Orleans, Louisiana, this date.

11-02-73 Certified-true copy of Judgment, U.S. Court of Appeals, REVERSING the Court Order, and REMANDING the Cause, filed.

5-03-74 Petition by the U.S. for an Order to Show Cause Why the Respondents Should not be Found in Criminal Contempt filed.

5-9-74 Docket Call—Govt moved to consolidate civil and criminal cases.

5-13-74 ORDER to Show Cause (for all defts) filed.

7-26-74 Motion to Dismiss Portions of the Criminal Contempt Petition Charges as to Respondent William B. Troy filed.

8-15-74 Hearing on Pre-trial motions. Motion to dismiss Portions of Criminal Contempt Petition; carried forward to trial. Court feels that is case is a jury trial, Court will bifurcate trial and have criminal trial first.

8-26-74 Petitioner's Memo in Support of Govt's Submission That This Case be Heard by Jury filed.

2-18-75 PreTrial Conference held—Hearing on Motion to Strike—OVERRULED. Jury Selection made and jurors sworn and case to trial before Jury.

2-19-75 Trial continued—testimony on behalf of Govt continued—Gov't rests—Testimony for Defts begun—Defts rest—Both sides close—Jury excused.

2-20-75 Trial resumed—Closing arguments made—Charge of Court given—Jury retires.

2-20-75 Note No. 1., received from Jury at 3:30 P.M., filed.

2-20-75 Motion of Respt. Martin Linen Supply Co. for Judgment of Acquittal, filed.

2-20-75 Motion of Respt. Texas Sanitary Towel Supply Corp. for Judgment of Acquittal, filed.

2-20-75 Motion of Respt. Wm. B. Troy for Judgment of Acquittal, filed.

2-21-75 Jury continues deliberation—Jury returned Verdict of "Not Guilty" for Respt. William B. Troy, only,—Mistrial declared as to Defts Cascade and Martin.

2-21-75 Jurors excused finally.

2-21-75 Note No. 2, rec'd from Jury at 12:15 PM, filed.

2-27-75 Motion of Resp. Martin Linen Sup. Co. for Judg. of Acquittal, filed.

2-27-75 Motion of Resp. Tex. San. Towel Sup. Corp. for Judg. of Acquittal.

3-17-75 Petnr's Memo in Opposition to Motions for Judgments of Acquittal as to Martin Linen Supply Co., and Tex. San. Towel Sup. Corp.

3-26-75 Respondents' Rejoinder in Support of their Motions for Judgment of Acquittal, filed.

4-24-75 Judgment of Acquittal of Martin Linen Supply Co., filed.

4-24-75 Judgment of Acquittal of Tex. San. Towel Supply Corp., filed.

5-19-75 Notice of Appeal filed by USA (from Acquittal of Martin Linen & Texas Sanitary).

5-23-75 Ltr, US Atty, Requesting Withholding of Record on Appeal Temporarily filed.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

5-19-75 Notice of appeal filed.

7-30-75 Record on appeal filed.

2-5-76 Case argued (Houston).

6-21-76 Opinion rendered. Dismissed (ILG; Signed).

7-13-76 Jdgt. as Mdt. Issd. to Clerk

7-21-76 Record on Appeal Retd. to Clerk

7-19-76 Order of S.C.—Ext. to 8-20-76

7-30-76 Notice of Flg. of Cert. Pet. on 7-27-76

11-8-76 Order of S.C.—Granted 11-1-76

11-9-76 Preparing Proceedings on Certiorari (6 vol appendix).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS

Civil Action No. SA 69-CA-114

Civil Contempt Petition

Filed: Dec. 9, 1971

UNITED STATES OF AMERICA, PETITIONER

v.

MARTIN LINEN SUPPLY COMPANY, TEXAS SANITARY TOWEL SUPPLY CORP., AND WILLIAM B. TROY, RESPONDENTS

PETITION BY THE UNITED STATES FOR AN ORDER TO SHOW CAUSE WHY THE RESPONDENTS SHOULD NOT BE FOUND IN CIVIL CONTEMPT

The United States of America by its attorneys, acting under the direction of the Attorney General, presents this Petition for an order requiring the above-named respondents to show cause why they should not be found in civil contempt of this Court. The petitioner represents to the Court as follows:

I

PRIOR JUDGMENT OF THIS COURT

1. On April 30, 1969, petitioner filed in this Court Civil Action No. SA 69-CA-114, brought under Section 4 of the Sherman Act (15 U.S.C. § 4), charging that since at least 1963 the respondents had been engaged in a combination and conspiracy to restrain, to monopolize and to attempt to monopolize the trade of furnishing linen supplies in the State of Texas, in violation of Sections 1 and 2 of the Sherman Act.

2. On June 2, 1969, upon consent of the parties, a Final Judgment ("Judgment") was entered in this Court, in Civil Action No. SA 69-CA-114. A copy of this Judgment is annexed to this Petition and marked as Exhibit "A".

3. Section III of the Judgment provides:

> The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, to its successors and assigns, to each of their respective officers, directors, agents, servants and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

4. Section X of the Judgment provides:

> Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violations hereof.

II

DESCRIPTION OF RESPONDENTS

5. Martin Linen Supply Company ("Martin") is hereby made a respondent. Martin is a corporation organized and existing under the laws of the State of Texas with its principal office in San Antonio, Texas. Martin supplies linens in and around several large cities in the States of Texas and Oklahoma. Martin was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

6. Texas Sanitary Towel Supply Corp., doing business as Cascade Linen Service ("Cascade"), is hereby

made a respondent. Cascade is a corporation organized and existing under the laws of the State of New York with offices in Dallas, Texas. Cascade is a linen supplier doing business in the State of Texas and is affiliated through common ownership with the respondent Martin. Cascade was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

7. William B. Troy, the controlling stockholder and president of both Martin and Cascade, is hereby made a respondent. Troy also actively participates in the ownership and control of many other linen supply companies doing business in various other areas of the United States. William B. Troy was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

III

VIOLATIONS OF THE JUDGMENT ALLEGED

8. Petitioner alleges that the above-named respondents have knowingly disobeyed and violated, and are continuing to disobey and violate, orders and decrees of this Court as set forth in the Judgment and are in civil contempt of the authority of this Court, as a result, among others, of the respondents' acts set forth below:

A. *Section V(A)(1)*

9. Section V(A)(1) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> (A) Threatening, coercing, inducing or attempting to induce:
>
> (1) Any linen rental supplier to refrain, while in business, from furnishing linen supplies to any customer, . . .

10. Petitioner alleges that since as early as 1969 and continuing to the date of filing this Petition, the respondents have violated Section V(A)(1) of the Judgment by threatening, coercing, inducing and attempting

to induce competitors to refrain from soliciting business from linen supply customers of Martin and Cascade, by conducting retaliatory sales campaigns and threatening such campaigns, as hereinafter described.

11. In furtherance of their efforts to threaten, coerce, and induce competitors to refrain from soliciting business from linen rental users who are customers of Martin and Cascade, the respondents have, among other things:

(a) Discussed with and communicated to competitors, directly and indirectly, the fact that respondents would recoup all business that the competitor took from respondents;

(b) Prepared and coordinated statistical records of all business lost to and won from each of their competitors ("Competitive Standing Book") to determine those competitors against whom retaliatory sales campaigns should be started; and

(c) Conducted the retaliatory sales campaigns described in Paragraphs 12 and 13 hereof.

12. The respondents have sought to coerce and induce Flake Uniform and Linen Supply ("Flake") of Wichita Falls, Texas, a competitive linen supplier, to refrain from soliciting customers of Cascade in the following manner:

(a) Sometime in mid-1970, Leo Latham, branch manager of Martin in Wichita Falls, Texas, threatened Leon Flake, president of Flake, that if Flake did not stop soliciting Cascade's customers in Dallas, Texas, Martin would wage a price war in Wichita Falls in order to regain sales lost by Cascade to Flake;

(b) On May 22 or June 15, 1970, Dan Sportsman, general manager of Martin, threatened Leon Flake that Martin would put him out of business;

(c) Sometime in early 1971, William B. Troy decided that Martin should launch a sales campaign against Flake in Wichita Falls, Texas, where both

Martin and Flake were doing business, in order to retaliate for those sales that Cascade had lost to Flake in Dallas, Texas; and

(d) Starting in April 1971, and continuing to date, Martin has conducted a retaliatory sales campaign against Flake both in Wichita Falls, Texas, and Lawton, Oklahoma, during which (1) salesmen of Martin have trailed Flake's delivery trucks in order to ascertain which csutomers they should solicit; (2) Martin has offered prices at and below the lowest prices it offers for services elsewhere in the State of Texas in order to win accounts from Flake; and (3) Martin has offered substantial amounts of free service in order to obtain business at Flake's expense.

13. The respondents have sought to coerce and induce Abilene Linen Supply Company ("Abilene") of Abilene, Texas, to refrain from soliciting customers of Martin in the following manner:

(a) In October 1969, after Abilene had obtained the Saga Food Service account which had previously been serviced by Martin, George Harrelson, a Martin branch manager in Abilene, Texas, told Don Wright, manager of Abilene, that he would "get even";

(b) Thereafter, Abilene lost business to Martin, in an amount in excess of the Saga Food Service account, through selective price cuts on the part of Martin; and

(c) On February 7, 1970, George Harrelson met with Don Wright and told him that if Abilene did not stop soliciting Martin's customers, he could expect more retaliation.

B. *Section V(B)*

14. Section V(B) of the Judgment provides that:

Each corporate defendant is enjoined and restrain from, directly or indirectly:

* * * *

(B) Threatening to put any linen rental supplier out of business;

15. Petitioner alleges that on May 22 or June 15, 1970, Dan Sportsman, general manager of Martin, made a telephone threat to Leon Flake, president of Flake, that Martin would put Flake out of business, in violation of Section V(B) of the Judgment.

C. *Section V(E)*

16. Section V(E) of the Judgment provides that:

Each corporate defendant is enjoined and restrained from, directly or indirectly:

* * * *

(E) Trailing or causing to be trailed the vehicle or vehicles, deliveryman or deliverymen of any other linen rental supplier;

17. Petitioner alleges that on July 12, 197[illegible], in Altus, Oklahoma, Garry Harris, a Martin salesman, was trailing a Flake truck in violation of Section V(E) of the Judgment.

D. *Section V(F)*

18. Section V(F) of the Judgment provides that:

Each corporate defendant is enjoined and restrained from, directly or indirectly:

* * * *

(F) Temporarily augmenting or adding to its personnel in any trading area outside of the course of a normal selling campaign for the purpose or with the effect of eliminating a competitor or competitors;

19. Petitioner alleges that respondents have violated Section V(F) of the Judgment by temporarily adding the following Martin salesmen to the Wichita Falls, Texas, and Lawton, Oklahoma trading area during the following periods:

(a)	Gary Harris	April 3—July 23, 1971
(b)	Max Welch	May 8—July 2, 1971
(c)	Dave Isbel	July 5, 1971—to at least August 3, 1971
(d)	Mark Sutphen	July 12, 1971—to at least August 3, 1971
(e)	Bob Davis	March 20, 1971—to at least August 3, 1971

20. The above-named individuals carried out the retaliatory sales campaign against Flake which is alleged in Paragraph 12(d) hereof, and which was conducted outside of a normal Martin selling campaign for the purpose of eliminating Flake as a competitor in the linen rental supply business in the Dallas, Texas trading area.

E. *Section VI*

21. Section VI of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from furnishing or offering or threatening to furnish linen supplies to a customer or potential customer on terms or conditions which involve below cost prices, lump sum cash payments to the customer, loans (other than bona fide loans by a defendant to its then existing customers), free service, gratuities or other similar inducements to obtain a contract or renewal of a contract for the furnishing of linen supplies, for the purpose or with the effect of eliminating a competitor or competitors.

22. Petitioner alleges that respondents carried out in part the retaliatory sales campaign described in Paragraph 12(d) hereof by using offers of free service and other similar inducements in the Wichita Falls, Texas, and Lawton, Oklahoma trading area for the purpose of eliminating Flake as a competitor in the linen rental supply business in the Dallas, Texas trading area, in violation of Section VI of the Judgment.

PRAYER

WHEREFORE, the petitioner moves this Court to:

1. Issue an order directing each of the respondents to appear before this Court, at a time and place to be fixed in said order, to show cause why they should not be adjudged in civil contempt of this Court; and

THEREAFTER,

2. Issue an order adjudging that respondents have been in civil contempt of this Court's Judgment, and further:

(a) Issue an order that respondents forthwith cease and desist from carrying out retaliatory sales campaigns in the manner alleged herein;

(b) Issue an order that the respondents forthwith cease and desist from maintaining a statistical record by competitor of business won or lost;

(c) Impose an appropriate fine upon the corporate respondents Martin and Cascade for each day after this Court's order that said respondents fail to carry out the directions of this Court;

(d) Impose an appropriate fine and imprisonment upon the individual respondent William B. Troy for each day after this Court's order that said respondent fails to carry out the directions of this Court;

(e) Issue such further orders as the nature of the case may require and as the Court may deem just and proper to compel obedience to, and compliance with, the Judgment; and

(f) Grant to the petitioner the cost of this proceeding.

/s/ Richard W. McLaren
RICHARD W. MCLAREN
Assistant Attorney General

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Robert B. Hummel
ROBERT E. HUMMEL

/s/ Bernard M. Hollander
BERNARD M. HOLLANDER
Attorneys, Department of Justice
Washington, D.C. 20530

United States Attorney

/s/ L. Barry Costilo
L. BARRY COSTILO

/s/ Stephen F. Sonnett
STEPHEN F. SONNETT
Attorneys, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS

Criminal No. SA 71CR 419

Supplement to Civil Action No. SA 69-CA-114

Criminal Contempt Petition

Filed: 12/9/71

UNITED STATES OF AMERICA, PETITIONER

v.

MARTIN LINEN SUPPLY COMPANY, TEXAS SANITARY TOWEL SUPPLY CORP., AND WILLIAM B. TROY, RESPONDENTS

PETITION BY THE UNITED STATES FOR AN ORDER TO SHOW CAUSE WHY THE RESPONDENTS SHOULD NOT BE FOUND IN CRIMINAL CONTEMPT

The United States of America by its attorneys, acting under the direction of the Attorney General, presents this Petition for an order requiring the above-named respondents to show cause why they should not be found in criminal contempt of this Court. The petitioner represents to the Court as follows:

I

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1. On April 30, 1969, petitioner filed in this Court Civil Action No. SA 69-CA-114, brought under Section 4 of the Sherman Act (15 U.S.C. § 4), charging that since at least 1963 the respondents had been engaged in a combination and conspiracy to restrain, to monopolize and to attempt to monopolize the trade of furnishing linen supplies in the State of Texas, in violation of Sections 1 and 2 of the Sherman Act.

2. On June 2, 1969, upon consent of the parties, a Final Judgment ("Judgment") was entered in this Court, in Civil Action No. SA 69-CA-114. A copy of this Judgment is annexed to this Petition and marked as Exhibit "A".

3. Section III of the Judgment provides:

> The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, to its successors and assigns, to each of their respective officers, directors, agents, servants and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

4. Section X of the Judgment provides:

> Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violations hereof.

II

DESCRIPTION OF RESPONDENTS

5. Martin Linen Supply Company ("Martin"), is hereby made a respondent. Martin is a corporation organized and existing under the laws of the State of Texas with its principal office in San Antonio, Texas. Martin supplies linens in and around several large cities in the States of Texas and Oklahoma. Martin was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

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a respondent. Cascade is a corporation organized and existing under the laws of the State of New York with offices in Dallas, Texas. Cascade is a linen supplier doing business in the State of Texas and is affiliated through common ownership with the respondent Martin. Cascade was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

7. William B. Troy, the controlling stockholder and president of both Martin and Cascade, is hereby made a respondent. Troy also actively participates in the ownership and control of many other linen supply companies doing business in various other areas of the United States. William B. Troy was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

III

VIOLATIONS OF THE JUDGMENT CHARGED

8. Petitioner charges that the above-named respondents have knowingly and willfully disobeyed and violated, and are continuing to knowingly and willfully disobey and violate, orders and decrees of this Court as set forth in the Judgment and are in criminal contempt of the authority of this Court, as a result, among others, of the respondents' acts set forth below:

A. *Section V(A)(1)*

9. Section V(A)(1) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> (A) Threatening, coercing, inducing or attempting to induce:
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> (1) Any linen rental supplier to refrain, while in business, from furnishing linen supplies to any customer, . . .

10. Petitioner charges that since as early as 1969 and continuing to the date of filing this Petition, the respondents have knowingly and willfully violated Sec-

tion V(A)(1) of the Judgment by threatening, coercing, inducing and attempting to induce competitors to refrain from soliciting business from linen supply customers of Martin and Cascade, by conducting retaliatory sales campaigns and threatening such campaigns, as hereinafter described.

11. In furtherance of their efforts to threaten, coerce, and induce competitors to refrain from soliciting business from linen rental users who are customers of Martin and Cascade, the respondents have, among other things:

(a) Discussed with and communicated to competitors, directly and indirectly, the fact that respondents would recoup all business that the competitor took from respondents;

(b) Prepared and coordinated statistical records of all business lost to and won from each of their competitors ("Competitive Standing Book") to determine those competitors against whom retaliatory sales campaigns should be started; and

(c) Conducted the retaliatory sales campaigns described in Paragraphs 12 and 13 hereof.

12. The respondents have sought to coerce and induce Flake Uniform and Linen Supply ("Flake") of Wichita Falls, Texas, a competitive linen supplier, to refrain from soliciting customers of Cascade in the following manner:

(a) Sometime in mid-1970, Leo Latham, branch manager of Martin in Wichita Falls, Texas, threatened Leon Flake, president of Flake, that if Flake did not stop soliciting Cascade's customers in Dallas, Texas, Martin would wage a price war in Wichita Falls in order to regain sales lost by Cascade to Flake;

(b) On May 22 or June 15, 1970, Dan Sportsman, general manager of Martin, threatened Leon Flake that Martin would put him out of business;

(c) Sometime in early 1971, William B. Troy decided that Martin should launch a sales campaign against Flake in Wichita Falls, Texas, where both Martin and Flake were doing business, in order to retaliate for those sales that Cascade had lost to Flake in Dallas, Texas; and

(d) Starting in April 1971, and continuing to date, Martin has conducted a retaliatory sales campaign against Flake both in Wichita Falls, Texas, and Lawton, Oklahoma, during which (1) salesmen of Martin have trailed Flake's delivery trucks in order to ascertain which customers they should solicit; (2) Martin has offered prices at and below the lowest prices it offered for services elsewhere in the State of Texas in order to win accounts from Flake; and (3) Martin has offered substantial amounts of free service in order to obtain business at Flake's expense.

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(a) In October 1969, after Abilene had obtained the Saga Food Service account which had previously been serviced by Martin, George Harrelson, a Martin branch manager in Abilene, Texas, told Don Wright, manager of Abilene, that he would "get even";

(b) Thereafter, Abilene lost business to Martin, in an amount in excess of the Saga Food Service account, through selective price cuts on the part of Martin; and

(c) On February 7, 1970, George Harrelson met with Don Wright and told him that if Abilene did not stop soliciting Martin's customers, he could expect more retaliation.

B. *Section V(B)*

14. Section V(B) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
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>
> (B) Threatening to put any linen rental supplier out of business;

15. Petitioner charges that knowingly and willfully on May 22 or June 15, 1970, Dan Sportsman, general manager of Martin, made a telephone threat to Leon Flake, president of Flake, that Martin would put Flake out of business, in violation of Section V(B) of the Judgment.

C. *Section V(E)*

16. Section V(E) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> * * *
>
> (E) Trailing or causing to be trailed the vehicle or vehicles, deliveryman or deliverymen of any other linen rental supplier;

17. Petitioner charges that knowingly and willfully on July 12, 1971, in Altus, Oklahoma, Gary Harris, a Martin salesman, was trailing a Flake truck in violation of Section V(E) of the Judgment.

D. *Section V(F)*

18. SectionV(F) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> * * * *
>
> (F) Temporarily augmenting or adding to its personnel in any trading area outside of the course of a normal selling campaign for the purpose or with the effect of eliminating a competitor or competitors;

19. Petitioner charges that respondents have knowingly and willfully violated Section V(F) of the Judgment by temporarily adding the following Martin salesmen to the Wichita Falls, Texas, and Lawton, Oklahoma trading area during the following periods:

(a)	Gary Harris	April 3—July 23, 1971
(b)	Max Welch	May 8—July 2, 1971
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(d)	Mark Sutphen	July 12, 1971—to at least August 3, 1971
(e)	Bob Davis	March 20, 1971—to at least August 3, 1971

20. The above-named individuals carried out the retaliatory sales campaign against Flake which is alleged in Paragraph 12(d) hereof, and which was conducted outside of a normal Martin selling campaign for the purpose of eliminating Flake as a competitor in the linen rental supply business in the Dallas, Texas trading area.

E. *Section VI*

21. Section VI of the Judgment provides that:

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22. Petitioner charges that respondents knowingly and wilifully carried out in part the retaliatory sales campaign described in Paragraph 12(d) hereof by using offers of free service and other similar inducements in

the Wichita Falls, Texas, and Lawton, Oklahoma trading area for the purpose of eliminating Flake as a competitor in the linen rental supply business in the Dallas, Texas trading area in violation of Section VI of the Judgment.

PRAYER

WHEREFORE, the petitioner moves this Court to issue an order directing each of the respondents to appear before this Court, at a time and place to be fixed in said order, to show cause why they should not be adjudged in criminal contempt of this Court and punished therefor.

/s/ Richard W. McLaren
RICHARD W. MCLAREN
Assistant Attorney General

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Robert B. Hummell
ROBERT B. HUMMEL

BERNARD M. HOLLANDER
Attorneys, Department of Justice
Washington, D.C. 20530

United States Attorney

/s/ L. Barry Costilo
L. BARRY COSTILO

/s/ Stephen F. Sonnett
STEPHEN F. SONNETT
Attorneys, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS

Criminal No. SA 71 CR 419

Supplemental to Civil Action

Criminal Contempt Petition

Filed: May 3, 1974

UNITED STATES OF AMERICA, PETITIONER

v.

MARTIN LINEN SUPPLY COMPANY, TEXAS SANITARY TOWEL SUPPLY CORP., AND WILLIAM B. TROY, RESPONDENTS

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> The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, to its successors and assigns, to each of their respective officers, directors, agents, servants and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

4. Section X of the Judgment provides:

> Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violations hereof.

II

DESCRIPTION OF RESPONDENTS

5. Martin Linen Supply Company ("Martin"), is hereby made a respondent. Martin is a corporation organized and existing under the laws of the State of Texas with its principal office in San Antonio, Texas. Martin supplies linens in and around several large cities in the States of Texas and Oklahoma. Martin was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

6. Texas Sanitary Towel Supply Corp. doing business as Cascade Linen Service ("Cascade"), is hereby made a respondent. Cascade is a corporation organized and existing under the laws of the State of New York with offices in Dallas, Texas. Cascade is a linen supplier doing business in the State of Texas and is affiliated through common ownership with the respondent Martin. Cascade was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

7. William B. Troy, the controlling stockholder and president of both Martin and Cascade, is hereby made a respondent. Troy also actively participates in the ownership and control of many other linen supply companies doing business in various other areas of the United States. William B. Troy was a defendant in Civil Action No. SA 69-CA-114 and is a party to the Judgment in that action.

III

VIOLATIONS OF THE JUDGMENT CHARGED

8. Petitioner charges that the above-named respondents have knowingly and willfully disobeyed and violated, and are continuing to knowingly and willfully disobey and violate, orders and decrees of this Court as set forth in the Judgment and are in criminal contempt of the authority of this Court, as a result, among others, of the respondents' acts set forth below:

A. *Section IV(B)*

9. Section IV(B) of the Judgment provides that:

> Each defendant is enjoined and restrained from entering into, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any person, not owned or controlled by such defendant, to directly or indirectly:
>
> * * * *
>
> (B) Divide, allocate or apportion markets, territories or customers for the furnishing of any linen supplies or otherwise restrict competition between or among linen rental suppliers;

10. Petitioner charges that respondent William B. Troy knowingly and willfully on or about May 25, 1970, entered into an understanding with Gene M. Gardner to allocate customers and restrict competition between City Linen Service and Cascade Linen Supply in violation of Section IV(B) of the Judgment.

B. *Section V(B)*

11. Section V(B) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> • • • •
>
> (B) Threatening to put any linen rental supplier our of business;

12. Petitioner charges that knowingly and willfully on May 22 or June 15, 1970, in violation of Section V(B) of the Judgment, Dan Sportsman, general manager of Martin, made a telephone threat to Leon Flake, president of Flake Uniform & Linen Service, Inc. ("Flake"), that Martin would put Flake out of business.

C. *Section V(E)*

13. Section V(E) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> • • • •
>
> (E) Trailing or causing to be trailed the vehicle or vehicles, deliveryman or deliverymen of any other linen rental supplier;

14. Petitioner charges that knowingly and willfully on July 12, 1971, in Altus, Oklahoma, Gary Harris, a Martin salesman, in the course of his employment, was trailing a Flake truck in violation of Section V(E) of the Judgment.

D. *Section V(F)*

15. Section V(F) of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from, directly or indirectly:
>
> • • • •
>
> (F) Temporarily augmenting or adding to its personnel in any trading area outside of the course of a normal selling campaign for the purpose or with the effect of eliminating a competitor or competitors;

16. Petitioner charges that respondents have knowingly and willfully violated Section V(F) of the Judgment by temporarily adding the following Martin salesmen to the Wichita Falls, Texas, and Lawton, Oklahoma trading area during the following periods:

(a) Gary Harris	April 3—July 23, 1971
(b) Max Welch	May 8—July 2, 1971
(c) Dave Isbel	July 5, 1971—to at least August 3, 1971
(d) Mark Sutphen	July 12, 1971—to at least August 3, 1971
(e) Bob Davis	March 20, 1971—to at least August 3, 1971

17. The above-named individuals carried out a campaign against Flake which was conducted outside of a normal Martin selling campaign for the purpose of eliminating Flake as a competitor in the linen rental supply business in the Dallas, Texas trading area.

E. *Section VI*

18. Section VI of the Judgment provides that:

> Each corporate defendant is enjoined and restrained from furnishing or offering or threatening to furnish linen supplies to a customer or potential customer on terms or conditions which involve below cost prices, lump sum cash payments to the customer, loans (other than bona fide loans by a defendant to its then existing customers), free service, gratuities or other similar inducements to ob-

tain a contract or renewal of a contract for the furnishing of linen supplies, for the purpose or with the effect of eliminating a competitor or competitors.

19. Petitioner charges that respondents knowingly and willfully threatened to furnish and did furnish from March 20, 1971 to at least August 3, 1971, free service and other similar inducements in the Wichita Falls, Texas and Lawton, Oklahoma trading area for the purpose of eliminating Flake as a competitor in the linen rental supply business in the Dallas, Texas trading area in violation of Section VI of the Judgment.

PRAYER

WHEREFORE the petitioner moves this Court to issue an order directing each of the respondents to appear before this Court, at a time and place to be fixed in said order, to show cause why they should not be adjudged in criminal contempt of this Court and punished therefor.

/s/ Thomas E. Kauper
THOMAS E. KAUPER
Assistant Attorney General

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Bernard M. Hollander
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/s/ W. Clyde Robinson
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[78]

RELEVANT PORTIONS OF TRIAL TRANSCRIPT

February 21, 1975

(The jury began deliberating at 9:00 O'Clock A.M. and then at 12:25 the following occurred:)

THE COURT: Now gentlemen, I have a note from the jury, "We have reached a verdict on only one Defendant. We honestly believe we can never unanimously agree on a verdict on the remaining two defendants. Signed February 21, 1975, Max Wagonhorn, Foreman."

Well, of course I think the thing to do now is to have the jury come in and at least have the verdict form [79] presented to the Court. I just have to make a judgment at that time. It just depends to a large extent on what they have found as to what action I will take. And it may be that I will give them further instructions and cause them to deliberate further, or I may, if they are hopelessly deadlocked as they say they are, discharge them. I'll just have to see. All right, will you have the jury brought down.

THE MARSHALL: I will.

THE COURT: Let's bring the jury in. Now, in the event the jury is hopelessly deadlocked, you will want the jury Foreman released from the rule in the event we would want to know how they stand, is that right, gentlemen?

MR. BARRERA: Yes, Your Honor.

(The jury was brought into the room.)

THE COURT: Mr. Wagonhorn, I'm going to ask you to take the seat on the end there. The balance of the jury can move down so that you can be accommodated by having the end chair. All right, you may be seated. Mr. Wagonhorn, would you please rise, sir. Mr. Wagonhorn, are you the Foreman of this jury?

THE FOREMAN: Yes, sir.

THE COURT: I have a note here which I will [80] read. "We have reached a verdict on only one Defend-

ant. We earnestly believe we can never unanimously agree on the remaining two Defendants."

But now my question Mr. Wagonhorn as Foreman of the jury, are you able to report that you have reached a unanimous verdict as to one Defendant?

THE FOREMAN: Yes.

THE COURT: And you do feel like that you are hopelessly deadlocked as to the other two Defendants?

THE FOREMAN: Yes, I do.

THE COURT: I must interpret that as the gist and meaning of your memo to me. Is that right, sir?

THE FOREMAN: Yes, sir.

THE COURT: All right. Now, the lawyers are going to want to know how you stand. I'm going to ask you now to approach the bench and I'm going to ask the lawyers to come forward, please.

(At the bench.)

THE COURT: You feel like further deliberations would be absolutely futile and useless?

THE FOREMAN: Yes, sir.

THE COURT: Now then, with reference to the verdict as to the two Defendants, how do you stand as to those [81] two?

THE FOREMAN: Eleven to one.

THE COURT: Is it for acquittal or for conviction?

THE FOREMAN: For conviction.

THE COURT: For conviction. And that is as to the two Defendants?

THE FOREMAN: Yes.

THE COURT: And that is for guilty?

THE FOREMAN: Yes, sir.

THE COURT: One for acquittal; one is holding out for acquittal?

THE FOREMAN: One for acquittal, yes, sir.

THE COURT: All right. Okay, that's what we wanted to know. But your verdict is unanimous as to one Defendant?

THE FOREMAN: Right.

THE COURT: Would you now just take your seat and I'll ask you to give the verdict form to the Marshal.

THE FOREMAN: I didn't bring it.

THE COURT: Where is the verdict form?

THE FOREMAN: Back in the jury room.

THE COURT: We'll have to take Mr. Waggonhorn back to get the jury form. He didn't bring any of the papers with him and the jury form is still back there. Just [82] accompany Mr. Waggonhorn back to the jury room. Get the jury form and bring all of the Exhibits back.

THE FOREMAN: Yes, Your Honor.

(A short pause while the Foreman went up to get the papers.)

THE COURT: Mr. Waggonhorn, have you signed the verdict form and dated it?

THE FOREMAN: Yes.

THE COURT: And in those cases where you couldn't reach a verdict, those are left blank?

THE FOREMAN: We left them blank.

THE COURT: All right, very well. Now, if you will hand your verdict to the Bailiff, Mr. Muzquiz. All right. Now, hand it to Mrs. Marley.

All right Mr. Troy, would you go with your counsel to the lectern and hearken to the Jury verdict. You may read the jury verdict.

THE CLERK: With respect to the charge that the Defendant violated the consent decree, "We the jury find the Defendant Troy not guilty. Signed February 21, 1975."

THE COURT: All right, you are discharged. You are acquitted, Mr. Troy. You are found not guilty. We will receive your verdict, members of the jury as to the [83] Defendant Troy and I think it is a very fair and just verdict.

Now at this time, I'm going to excuse the jury and declare a mistrial as to the two remaining Defendants. And under the circumstances, I'm going to again of course remind you that your deliberations and thought processes, that is, what went on in the jury room is confidential. It is secret. And of course the purpose for that rule, Rule 20, in the Western District of Texas

is to some measure protect the confidences and privacy of the jurors.

All District Courts don't have that rule, but we have it here. So, you are not to discuss the case or your deliberations with anybody, with anyone, any lawyer, anyone connected with the parties or anyone else unless I free you to do that. That is, unseal your lips. I will read, as I'm required to do, Rule 20.

"Jurors are not to be interviewed. No attorney or any party to an action or other person shall himself or through any investigator or other person acting for him interview, examine or question any juror, relative, friend or associate thereof either during the pendency of the trial or with respect to the deliberations of the verdict of the jury in any action except on leave of Court granted upon good cause shown."

Now, you are excused from further service of this term of Court and I am very grateful to you. I look forward hopefully to have you in this Court again. God bless you [84] and you are excused. All right.

(The jury then left the courtroom and the following is had outside their hearing and presence:)

THE COURT: All right gentlemen, where do we go from here? What is the position of the Government?

MR. SONNETT: At this time, I really don't know, Your Honor.

THE COURT: I'll be frank with you, gentlemen. I almost instructed a verdict for all Defendants in this case. I almost granted a judgment for the Defendants. I think this is one of the weakest—I'm saying you did a very creditable job with what you had, Mr. Sonnett. I have seen some contempt cases, but this is without a doubt the weakest I've ever seen.

It appears to me that this was just nothing in the world but a fight between a bunch of cut-throat competitors in a very competitive business where one of them was fighting at a disadvantage with this consent decree. And the other people were taking advantage. That's the way this thing strikes me. And my present inclination, I'm not going to make that judgment today,

would be to enter a judgment of acquittal as to these other two Defendants if an appropriate motion was made for [85] judgment non absente veredicto. That's the way I feel about it at the present time. That's my inclination. I have heard all of the evidence in the case.

I talked to Judge Spears about this consent decree this morning. I have gone over these matters with him. He absolutely has no recollection of the consent decree, but he just enters them like I do if the parties want them. But he is of the opinion in view of what I've told him that he would entertain a motion based upon my relay to him of what has happened during this trial, he's receptive to a motion to set aside the consent decree or refer it to me for my decision.

My inclination would be that I would recommend that counsel for the Defendants in this case do that. I think the consent decree as entered and as the evidence shows in this type of business places the Defendants at a disadvantage against other competitors. And I think people like Flake and these other people are taking advantage of them.

If anybody should be under a consent decree, I would say in this particular case some of these witnesses in this case should certainly be. But it just so happens that Martin Linen was under this injunctive restraint, and it looks like to me that people have taken advantage of them according to the proof here. I certainly couldn't see under any circumstances where Mr. Troy has violated it.

MR. SONNETT: Your Honor, as Your Honor [86] recognizes, this is an industry which is very disruptive in their competitive practices. We do have a series of antitrust judgments in this industry, Your Honor. And—

THE COURT: Well, I believe from what I have heard here I would be inclined, if it was up to me to set this consent decree aside, to let you earn the right to put these parties under injunction because there gets to be a thin line between open competition where the public is going to get the best prices and where people are using a consent decree to hammer somebody over the head where they can't keep up. And that's what it

looks like here. These people are filing a consent decree against this one Defendant and the president individually, and they use that as the basis for enlarging and expanding and they've been just as guilty it seems to me of the very vices that you have charged the Defendants with in this case.

MR. SONNETT: Yes, Your Honor.

THE COURT: But they just happen not to be under the consent decree.

MR. SONNETT: The problem is, Your Honor, of course we have limited resources, and this is an industry, Your Honor, where we believe that these consent decrees are followed or at least they are a sign post to other competitors in the industry. And to withdraw a decree because it puts them at a disability would open up again—

THE COURT: How many consent decrees have [87] been entered against Martin to which it has consented in this country today?

MR. SONNETT: Martin itself?

THE COURT: Uh-huh.

MR. SONNETT: One.

THE COURT: Is this the only one?

MR. SONNETT: But National is under a consent decree, Consolidated—

THE COURT: I haven't tried National in this case. I did try Martin Linen.

MR. SONNETT: My only point was, Your Honor—

THE COURT: To try to establish criminal penalties for contempt beyond a reasonable doubt, it absolutely staggers my mental capabilities. I just don't see how in this particular instance that this proof would show criminal intent or contumacious acts under this consent decree.

Now, perhaps the consent decree is too broad. I have seen them where I thought they were too broad where I have changed them. And I think this one may be too broad in view of the type of industry we are concerned with here. Sometimes the Defendant enters into a consent decree and later rues the day that he did it and wishes that he had had an opportunity to retry that question again.

Once he is under it, then it is up to the Court [88] to let him out of it. And of course when he consents to it—and I don't like to enter consent decrees to be perfectly honest with you open handedly ad infinitim. I think that they've been under this restraint now since 1969. I think that's long enough for people to reform and to correct some of the vices with which they were charged originally. That's the present feeling of the Court. I wanted both sides to know how I felt about it. Anything further?

MR. SONNETT: No, Your Honor, not right now.

MR. BARRERA: On behalf of the Defendant and our witnesses, Your Honor, we want to express our appreciation for the Court's courtesy and concern. Thank you.

THE COURT: Well, don't thank me for doing my duty.

MR. BARRERA: I say for the Court's courtesy and concern.

THE COURT: All right. Okay. All right gentlemen, I'm open to any motions that either side would like to file. And I would also like to know where we stand on the civil contempt. I think that you have had your day in Court on the criminal contempt, and I'm inclined to believe that in cases involving white collar, alleged white collar crimes of this kind, contempt proceedings under consent decrees, there has got to be an end to it. I gave you every opportunity to convict these Defendants and you came very close on the corporate [89] Defendants, but you didn't come close on the individual.

I would be inclined to bring this thing to an end at this time and at least give Martin a fresh start if there's any way to do it. All right, we'll be in recess.

(End of proceedings.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS

[Filed Feb. 27, 1975, Dan W. Benedict, Clerk.
By F. M., Deputy]

Criminal No. SA 71 CR 419

UNITED STATES OF AMERICA, PETITIONER

v.

MARTIN LINEN SUPPLY COMPANY, TEXAS SANITARY TOWEL SUPPLY CORP., AND WILLIAM B. TROY, RESPONDENTS

MOTION OF RESPONDENT MARTIN LINEN SUPPLY COMPANY FOR JUDGMENT OF ACQUITTAL

Now comes Respondent, MARTIN LINEN SUPPLY COMPANY ("Martin") and, pursuant to Rule 29(c), F.R.Cr.P., moves this Court for judgment of acquittal on the grounds that the evidence is insufficient to sustain a conviction of the offense charged. Respondent Martin urged such a motion both at the close of the Government's case and at the close of its case. The motion, in both instances, was denied and the case submitted to the jury. After due deliberation, the jury reported to the Court that it was hopelessly deadlocked and that it had reached a verdict with respect to William B. Troy. Mr. Troy was found "not guilty."

In support of its motion Martin reurges its previous motions for judgment of acquittal and presents the following points.

I.

The fact that the jury was deadlocked after lengthy deliberations is indicative that the evidence was inadequate to support a conclusion of guilt beyond a reasonable doubt.

II.

The Government charged that Respondent Troy did knowingly and willfully enter into an understanding with Gene M. Gardner to allocate customers and restrict competition between City Linen Service ("City") and Cascade Linen Service ("Cascade") in violation of Section IV(B) of the Consent Decree.

The Government has failed to allege and to discharge its heavy burden of proving, beyond a reasonable doubt, that Martin willfully and knowingly violated Section IV(B).

There is no credible evidence that shows that Troy entered into an understanding to allocate customers or restrict competition or that such was actually done. The jury so found when it returned a verdict of "not guilty" with respect to Troy.

Even if such understanding had been proven, there is no evidence that Troy was acting for Martin or in the course and scope of his employment by Martin. As a result, Troy's acts could not be imputed to Martin and thereby sustained a conviction for violation of the proscription.

III.

It is charged that Martin violated Section V(A)(1) of the Consent Decree by threatening, coercing, inducing, and attempting to induce Flake Uniform and Linen Supply ("Flake") and Abilene Linen Supply Company ("Abilene") to refrain from soliciting customers of Cascade and Martin by conducting retaliatory sales campaigns and threatening such campaigns. It is specifically alleged that threats were leveled and a sales campaign initiated against Flake for the purpose of coercing Flake to refrain from taking Cascade's customers in Dallas. It is further specifically alleged that George Harrelson, an employee of Martin, stated that he would "get even" with Abilene for business taken from Martin and that Abilene could expect more retaliation if Abilene continued to solicit Martin's customers. The use of selective price cuts on the part of Martin for the purpose of getting Abilene customers is also alleged as a violation of Section V(A)(1).

There is no evidence that the alleged facts, if done, were within the course and scope of the employment of the persons alleged to have committed the acts. All of the named employees were specifically directed by Martin not to violate the Consent Decree. There is no proof that Martin urged, approved, directed or condoned the alleged violations. Consequently, the acts, if done, were clearly outside the course and scope of employment and cannot serve as a basis for conviction of a violation of the Section.

There is no credible evidence that the alleged activities constituted threatening, coercing, inducing or attempting to induce Flake or Abilene from soliciting linen supply customers of Martin and Cascade. All the evidence shows is that the activities were directed at replacing volume lost as a result of competition, all of which did nothing more than create more competition, which must be the objective of the Consent Decree.

To "get even" or "retaliate" was clearly established to be absolutely normal and commonplace in the ebb and flow of competition. Furthermore, the Consent Decree does not, in any respect, prohibit getting even or retaliation. Such activities are associated with the totally permissible purpose of replacing volume or business lost as a result of competition, all of which does nothing more than further competition.

Even if all the activities were proven beyond a reasonable doubt and even if it were proven beyond a reasonable doubt that Martin knowingly and willfully directed, approved, condoned, or otherwise participated in such activities, it could not be convicted of a violation of Section V(A)(1) because its language is vague and ambiguous and, therefore, a conviction could not be sustained. Absolute proof of the ambiguity is found in the fact that this Court and the Fifth Circuit reached diametrically opposed conclusions as to the meaning of the section. If trained legal minds can reach such strikingly opposite conclusions, how can mere laymen be expected to know its true meaning. So long as the violative acts are not in bad faith, there is no contempt. The record is absolutely void of any evidence that bad faith, on the part of Martin, was present.

IV.

The Contempt Petition charges that Dan Sportsman, general manager of Martin, threatened to put Flake out of business. This allegation is made in connection with a recitation of Section V(B) of the Consent Decree which prohibits such threats.

There is no evidence that the alleged threat, if made, was within the course and scope of the employment of Sportsman. He was specifically directed by Martin not to violate the Consent Decree. There is no proof that Martin urged, approved, directed, or condoned the alleged threat. Consequently, the threat, if made, was clearly outside the course and scope of employment and cannot serve as a basis for conviction of a violation of the section.

The record is absolutely void of any credible evidence that Sportsman threatened to put Flake out of business. The burden to prove the charge beyond a reasonable doubt has not been discharged.

V.

It is charged that Gary Harris, a Martin salesman, acted in violation of Section V(E) of the Consent Decree by trailing a Flake truck, in the course of his employment.

It is not charged, and there is no proof that, even if the trailing occurred, Harris was acting within the course and scope of his employment. Harris was specifically directed by Martin not to violate the Consent Decree. There is no proof that Martin urged, approved, directed, or condoned the alleged trailing. Consequently, the trailing, if done, was clearly outside the course and scope of employment and cannot serve as a basis for conviction of a violation of the section.

There is absolutely no evidence of any type that a Flake truck was trailed by Gary Harris or anyone else.

VI.

The Contempt Petition charges that the Respondents violated Section V(F) of the Consent Decree by tem-

porarily augmenting or adding to its personnel in a trading area outside of a normal selling campaign for the purpose of eliminating Flake as a competitor in the Dallas trading area.

The Government had hopelessly failed to put forth any evidence that the salesmen who solicited business in the Lawton area were doing anything other than conducting a normal sales campaign for the purpose of increasing business. There was no showing of any purpose to eliminate Flake as a competitor in Dallas.

VII.

It is alleged that Respondents violated Section VI of the Consent Decree by threatening to furnish and furnishing free service and other similar inducements in the Wichita Falls trading area for the purpose of eliminating Flake as a competitor in Dallas.

The Government completely failed to prove, beyond a reasonable doubt, that free service and other similar inducements were threatened or given for the purpose of eliminating Flake as a competitor in Dallas. The evidence conclusively shows that threats to use or use of free service and similar inducement, if any there were, was for the sole purpose of getting new business to replace business lost to Flake in Dallas.

WHEREFORE, for all of the foregoing reasons, the Court is respectfully urged to enter judgment of acquittal with respect to the Respondent Martin.

Respectfully submitted,

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By: /s/ Roy R. Barrera
ROY R. BARRERA
Attorneys for Respondent Martin

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing motion was served upon counsel for Petitioner by mailing a copy thereof to Stephen Sonnett, Esquire, Department of Justice, Antitrust Division, Washington, D.C. 20530, on the 27th day of February, 1975.

/s/ Roy R. Barrera
ROY R. BARRERA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

[Filed Feb. 27, 1975, Dan W. Benedict, Clerk.
By F. M., Deputy]

Criminal No. SA 71 CR 419

UNITED STATES OF AMERICA, PETITIONER

v.

MARTIN LINEN SUPPLY COMPANY, TEXAS SANITARY TOWEL SUPPLY CORP., AND WILLIAM B. TROY, RESPONDENTS

MOTION OF RESPONDENT TEXAS SANITARY TOWEL SUPPLY CORP. FOR JUDGMENT OF ACQUITTAL

Now comes Respondent, TEXAS SANITARY TOWEL SUPPLY CORP. ("Cascade") and, pursuant to Rule 29(c), F.R.Cr.P., moves this Court for judgment of acquittal on the grounds that the evidence is insufficient to sustain a conviction of the offense charged. Respondent Cascade urged such a motion both at the close of the Government's case and at the close of its case. The motion, in both instances, was denied and the case submitted to the jury. After due deliberation, the jury reported to the Court that it was hopelessly deadlocked with respect to Cascade and Martin Linen Supply Company and that it had reached a verdict with respect to William B. Troy. Mr. Troy was found "not guilty".

In support of its motion Cascade reurges its previous motions for judgment of acquittal and presents the following points.

I.

The fact that the jury was deadlocked after lengthy deliberations is indicative that the evidence was inadequate to support a conclusion of guilt beyond a reasonable doubt.

II.

The Government charged that Respondent Troy did knowingly and willfully enter into an understanding with Gene M. Gardner to allocate customers and restrict competition between City Linen Service ("City") and Cascade in violation of Section IV(B) of the Consent Decree.

The Government has failed to allege and to discharge its heavy burden of proving, beyond a reasonable doubt, that Cascade willfully and knowingly violated Section IV(B).

There is no credible evidence that shows that Troy entered into an understanding to allocate customers or restrict competition or that such was actually done. The jury so found when it returned a verdict of "not guilty" with respect to Troy.

Even if such understanding had been proven, there is no evidence that Troy was acting for Cascade or in the course and scope of his employment by Martin. As a result, Troy's acts could not be imputed to Cascade and thereby sustained a conviction for violation of the proscription.

III.

It is charged that Cascade violated Section V(A)(1) of the Consent Decree by threatening, coercing, inducing, and attempting to induce Flake Uniform and Linen Supply ("Flake") and Abilene Linen Supply Company ("Abilene") to refrain from soliciting customers of Cascade and Martin by conducting retaliatory sales campaigns and threatening such campaigns. It is specifically alleged that threats were leveled and a sales campaign initiated against Flake for the purpose of coercing Flake to refrain from taking Cascade's customers in Dallas. It is further specifically alleged that George Harrelson, an employee of Martin Supply Company ("Martin"), stated that he would "get even" with Abilene for business taken from Martin and that Abilene could expect more retaliation if Abilene continued to

solicit Martin's customers. The use of selective price cuts on the part of Martin for the purpose of getting Abilene customers is also alleged as a violation of Section V(A)(1).

There is no evidence that the alleged facts, if done, were within the course and scope of the employment of the persons alleged to have committd the acts. All of the named employees were specifically directed by Martin not to violate the Consent Decree. There is no proof that Martin urged, approved, directed or condoned the alleged violations. Consequently, the acts, if done, were clearly outside the course and scope of employment and cannot serve as a basis for conviction of a violation of the Section.

In addition, there is no evidence that the acts, if done, were ordered, directed, or requested by or in any way connected to Cascade or even that Cascade knew of any such acts. As a result, the alleged acts cannot, under any theory, be imputed to Cascade and serve as a basis for conviction of violations of the section.

There is no credible evidence that the alleged activities constituted threatening, coercing, inducing or attempting to induce Flake or Abilene from soliciting linen supply customers of Martin and Cascade. All the evidence shows is that the activities complained of were directed at replacing volume lost as a result of competition, all of which did nothing more than create more competition, which must be the objective of the Consent Decree.

To "get even" or "retaliate" was clearly established to be absolutely normal and common place in the ebb and flow of competition.

Furthermore, the Consent Decree does not, in any respect, prohibit getting even or retaliation. Such activities are associated with the totally permissable purpose of replacing volume or business lost as a result of competition, all of which does nothing more than further competition.

Even if all the activities were proven beyond a reasonable doubt and even if it were proven beyond a reasonable doubt that Cascade knowingly and willfully directed,

approved, condoned, or otherwise participated in such activities, it could not be convicted of a violation of Section V(A)(1) because its language is vague and ambiguous and thus a conviction cannot be sustained. Absolute proof of the ambiguity is found in the fact that this Court and the Fifth Circuit reached diametrically opposed conclusions as to the meaning of the section. If trained legal minds can reach such strikingly opposite conclusions, how can mere laymen be expected to know its true meaning. So long as the violative acts are not in bad faith, there is no contempt. The record is absolutely void of any evidence that bad faith, on the part of Cascade was present.

VI.

The Contempt Petition charges that Dan Sportsman, general manager of Martin, threatened to put Flake out of business. This allegation is made in connection with a recitation of Section V(B) of the Consent Decree which prohibits such threats.

There is no evidence that the alleged threat, if made, was within the course and scope of the employment of Sportsman. He was specifically directed by Martin not to violate the Consent Decree. There is no proof that Martin urged, approved, directed, or condoned the alleged threat. Consequently, the threat, if made, was clearly outside the course and scope of employment and cannot serve as a basis for conviction of a violation of the section.

There is no allegation nor is there any proof of any type that Cascade knew of any such threat or that it ordered, directed or condoned, or was in any way connected with any such threat. Absent such proof, beyond a reasonable doubt, there can be no conviction for a knowing and willful violation of the Section by Cascade.

The record is absolutely void of any credible evidence that Sportsman threatened to put Flake out of business. The burden to prove the threat beyond a reasonable doubt has not been discharged.

V.

It is charged that Gary Harris, a Martin salesman, acted in violation of Section V(E) of the Consent Decree by trailing a Flake truck, in the course of his employment. It is not charged, and there is no proof that, even if the trailing occurred, Harris was acting within the course and scope of his employment. Harris was specifically directed by Martin not to violate the Consent Decree. There is no proof that Martin urged, approved, directed, or condoned the alleged trailing. Consequently, the trailing, if done, was clearly outside the course and scope of employment and cannot serve as a basis for conviction of a violation of the section. Further, there is no evidence that Cascade requested, directed, knew of, condoned, or was, in any way, connected to the alleged incident, even if it did occur.

There is no evidence of any type that a Flake truck was trailed by Gary Harris or anyone else.

VI.

The Contempt Petition charges that the Respondents violated Section V(F) of the Consent Decree by temporarily augmenting or adding to its personnel in a trading area outside of a normal selling campaign for the purpose of eliminating Flake as a competitor in the Dallas trading area.

The Government has hopelessly failed to put forth any evidence that the salesmen who solicited business in the Lawton area were doing anything other than conducting a normal sales campaign for the purpose of increasing business. There was no showing of any purpose to eliminate Flake as a competitor in Dallas.

Even if the sales effort was abnormal and for the purpose of eliminating Flake as a competitor in Dallas, there is no proof that Cascade knew of the abnormality and purpose or that it ordered, directed or condoned it. Absent such proof, beyond a reasonable doubt, there can be no conviction of Cascade for knowingly and willfully violating Section V(F) of the Consent Decree.

VII.

It is alleged that Respondents violated Section VI of the Consent Decree by threatening to furnish and furnishing free service and other similar inducements in the Wichita Falls trading area for the purpose of eliminating Flake as a competitor in Dallas.

The Government completely failed to prove, beyond a reasonable doubt, that free service and other similar inducements were threatened or given for the purpose of eliminating Flake as a competitor in Dallas. The evidence conclusively shows that any threats to use or use of free service and similar inducements, if any there were, was for the sole purpose of getting new business to replace business lost to Flake in Dallas.

Even if such threats and use were proven, Cascade could not be convicted of a violation of the section because the Government failed to discharge its heavy burden of proving that Cascade had any knowledge thereof or that it ordered, directed or condoned or was connected with any such threats or use, and thereby knowingly and willfully violated the Consent Decree.

Wherefore, for all the foregoing reasons, the Court is respectfully urged to enter judgment of acquittal with respect to the Respondent Cascade.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion was served upon counsel for Petitioner by mailing a copy thereof to Stephen Sonnett, Esquire, Department of Justice, Antitrust Division, Washington, D.C. 20530, on the 27th day of February, 1975.

/s/ Roy R. Barrera

SUPREME COURT OF THE UNITED STATES

No. 76-120

UNITED STATES, PETITIONER

v.

MARTIN LINEN SUPPLY COMPANY, ET AL.

ORDER ALLOWING CERTIORARI. Filed November 1, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

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